

Legal Standing & next steps in review East Village at Meadowlands Information sheet

- 1) Why is the town reviewing this request when the property is not in the city limits?
 - a. The applicant (US 70 A, LLC) is seeking annexation into Hillsborough. The town combines the annexation and development review hearings into one hearing as a matter of efficiency and because comments from neighbors are often relevant to both actions. The applicant's request for annexation impacts only the project properties, no other lands are being considered for annexation.
- 2) What happened on August 20?
 - a. An adjoining property owner filed a claim of legal "standing" for this project and objected to the remote hearing process. This is a new step in "quasi-judicial" development review hearings added by the state legislature in May 2020 as part of authorizing towns to hold remote hearings during a declared state of emergency (such as the current COVID 19 state of emergency). The boards had to first determine whether the neighbor has legal "standing" to participate in the hearing and to object to the remote hearing before they could discuss the project. The neighbor was represented at the hearing last week by an attorney who asked for additional time to adequately present the case to establish legal "standing." The boards agreed to continue the public hearing to Thursday, September 17 at 7 p.m., at which time they will take up the matter of "standing." This hearing will be remote.
- 3) What does legal "standing" mean?
 - a. "Standing" means having a sufficient stake in the outcome of an application to be able to participate in the application process. Generally speaking, there are 3 groups with legal "standing" to participate in a regulatory land use decision: (1) the owner of the property/applicant; (2) the local government entity making the decision; and (3) other persons who will suffer "special damages" as a result of the decision.
- 4) What does "special damages" mean?
 - a. Generally speaking, to establish "special damages" one must provide competent evidence showing that if the project is approved, the value of the property owned by the person claiming legal "standing" would be diminished. An allegation of damage to the community in general is not sufficient to confer "standing". But, if the objector can demonstrate, for example, that they will be affected by noise, odors, stormwater, drainage, traffic, parking, increased crime, and similar effects of the project in a manner distinct from the community in general, and to a significant extent, they may be able to establish legal "standing." Stated very generally, the federal courts have held that in order to have "standing" a plaintiff must show "(1) an actual, concrete, particularized injury in fact; (2) a causal connection between the injury and the defendant's actions; and (3) a likelihood that the injury can be redressed by a favorable decision in the case." (citation omitted).

5) What happens on September 17?

- a. The Town Board and Planning Board will convene again, remotely, and hear evidence limited to the legal “standing” of the neighbor (and potentially others who may object to the conduct of the remote hearing). The applicant will also have the option to ask questions or present evidence disputing the claim of “standing”. The boards are expected to conclude the hearing and make a decision **about “standing” only** that evening.
 - i. If the claim of legal “standing” is upheld, a proposal for a different hearing process will be discussed and a hearing will be scheduled on the applicant’s applications. The town is trying to develop hearing options that meet participation ideals while also meeting the Governor’s Executive Order and the County’s state of emergency declaration limiting in person meetings. The date is uncertain. New hearing signs, newspaper ads, and mailed notice would be sent prior to any subsequent hearing on the applications.
 - ii. If the claim of “standing” is not upheld, the boards will call a public hearing on the applications. This hearing would be held remotely. The most likely date would be October 15 and new hearing signs, newspaper ads, and mailed notice would be sent.